

**U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250**

<b>DEPARTMENTAL REGULATION</b>		<b>NUMBER:</b> 4070-771
<b>SUBJECT:</b> Administrative Grievance System	<b>DATE:</b> October 6, 2010	
	<b>OPI:</b> Office of Human Resources Management	

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1. **PURPOSE**

The purpose of this directive is to set forth the Department of Agriculture's (USDA) policy and procedures for the filing, reviewing, and disposition of administrative grievances.

The purpose of an administrative grievance system is to provide a fair, equitable, and timely forum for internal review and resolution of disputes on employment related matters. An efficient and effective administrative grievance system is in the best interest of both the agency and the employee in that, among other things, it provides a means for the agency to identify and track employee concerns.

2. **AUTHORITY**

This directive is issued pursuant to Title 5, Code of Federal Regulations, Part 771 – Agency Administrative Grievance System.

### 3. POLICY

USDA recognizes that disputes will occur in the workplace from time to time and that it is to the benefit of all concerned to resolve these disagreements as promptly and equitably as possible. Accordingly, it is USDA's policy that grievances are to be addressed and, where possible, resolved at the lowest agency level and within established timeframes. To that end, agencies and employees are also encouraged to consider the use of the Alternative Dispute Resolution (ADR) program to bring about resolution of workplace conflicts.

### 4. SPECIAL INSTRUCTIONS

This directive replaces Department Personnel Manual, Chapter 771, Administrative Grievance Procedure, dated May 26, 1993 and extended by memorandum dated February 1, 1995.

### 5. DEFINITIONS

- a. Alternative Dispute Resolution (ADR). ADR includes an array of techniques used to achieve consensual resolution of disputes, generally with the assistance of a neutral third party.
- b. Agency. Organizational unit of the Department, other than a staff office, whose head reports to an Under Secretary.
- b. Agency Head. The head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.
- c. Bargaining Unit Employee. An employee included in an exclusive bargaining unit as determined by the Federal Labor Relations Authority for which a labor organization has been granted exclusive recognition.
- d. Completion of Processing. A stage in the review of a grievance indicating that the agency has either canceled the grievance, resolved it to the satisfaction of the employee or has issued a written proposed disposition of the formal grievance that has given the Grievant the option of requesting a final decision from the agency head, with or without review of the grievance by a Department grievance examiner.
- e. Days. Calendar days.

- f. Equal Employment Opportunity (EEO) Complaint. A complaint filed under the USDA EEO complaint procedure alleging adverse employment treatment motivated by prohibited considerations such as race, religion, sex, national origin, physical or mental disability, sexual orientation or age. This includes contacts with an EEO counselor or filing an action with the courts alleging discrimination.
- g. Grievance. A request by an employee, or a group of employees, for personal relief in a matter of concern or dissatisfaction related to employment that is subject to the control of agency management. Employees filing a group grievance must all be part of the same organizational segment, be specifically named as a Grievant, and sign the grievance.
- h. Grievance Examiner. A person appointed by the Office of Human Resources Management (OHRM) to analyze the complete history of a grievance and, if necessary gather additional information to render a recommended decision on the issues at hand. The grievance examiner must be an individual who has not been involved previously in the matter being grieved and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being grieved. Only individuals appointed by OHRM may use the title “Grievance Examiner”.
- i. Grievance File. A tabbed and indexed file established for the purpose of creating and preserving a record of all documents and evidence pertinent to a grievance. This includes the entire history of the matter being grieved including the informal grievance, informal response, formal grievance, formal response, proposed actions, evidence files, decisions, employee response documentation, and any documentation relied upon to make a decision in the earlier stage of the grievance process.
- j. Personal Relief. A specific remedy that will directly benefit the Grievant. Personal relief may be a request that benefits the Grievant and at the same time benefits someone else. A statement of apology or request for disciplinary or other action affecting another employee is not a request for personal relief. Failure to request personal relief may be grounds for cancellation of a grievance.
- k. Staff Office. Departmental administrative office whose head reports to the Secretary. The term “agency” is used synonymously in this regulation to encompass staff offices.
- l. Staff Office Head. The head of a staff office or an official who has been delegated the authority to act for the head of the staff office in the matter concerned.
- m. Time Limits. The maximum period of time allowable for submitting or responding to a grievance. Time limits are calculated in calendar days. When a

due date falls on a non-workday, the next workday will be considered to be the due date. An agency may waive filing time limits for good cause. The Grievant has the burden of demonstrating that good cause for a waiver exists.

## 6. RESPONSIBILITIES

- a. OHRM is responsible for developing and maintaining the USDA's administrative grievance system, providing grievance examining services, issuing authoritative determinations on all matters associated with the system, reviewing the grievance processing performance of agencies of USDA and making recommendations for improvement to appropriate officials.
- b. Agencies/Staff Offices are responsible for developing and implementing internal procedures to ensure timely and fair consideration of employee grievances, telling employees about the availability of the grievance system, answering employee questions regarding their grievance rights, and following the USDA's grievance system.

Agencies may supplement this procedure to meet particular needs of the organization. Agencies are required to publish and make available copies of the administrative grievance policies. Means of publication may include agency policy statements, regulations, pamphlets or brochures. An agency may wish to consider inclusion of its grievance system in orientation packets, posting at work site areas frequently visited by employees and posting on agency Web sites. Agencies must provide personal copies to employees upon request.

- c. Grievants are responsible for raising grievance issues at the lowest agency level possible within established time frames, cooperating in resolution efforts and advising the agency of any designated representative.

## 7. GRIEVANCE SYSTEM COVERAGE

- a. Employees Covered Except as provided below, the administrative grievance procedure applies to all non-bargaining unit employees of USDA, regardless of the type of appointment held. Coverage also applies to former employees of USDA for whom a remedy can legally be provided.
- b. Employees Excluded Non-citizens, aliens, bargaining unit employees, employees covered by the Foreign Service Grievance System, individuals who hold a Federal appointment but serve without Federal compensation, and reinstatement and transfer eligible employees applying for positions under a merit promotion plan.

- c. Subject Matter Covered Except as listed below in subsection 7d, the administrative grievance system applies to any matter of concern or dissatisfaction, that is subject to the control of agency management, relating to the employment of an employee.

Examples of covered matters include working conditions, improper application of or failure to follow rules and regulations, unfair treatment, prohibited personnel practices, performance appraisals, pay setting decisions, suspension from duty without pay for 14 days or less, letters of reprimand and reassignments.

- d. Subject Matter Excluded

- (1) The content of published agency regulations and policy. The application of agency regulations and policy to an individual may be grieved.
- (2) Separation of employees serving under Schedule A, B, or C appointments.
- (3) Matters appealable to the Equal Employment Opportunity Commission (EEO complaints), Office of Personnel Management (such as pay matters), Merit Systems Protection Board (such as suspensions of more than 14 days to removal, reductions in force, demotions and within-grade step increase withholding), Comptroller General, Federal Labor Relations Authority, or the Federal Mediation Conciliation Service.
- (4) Worker compensation injury claims that fall under the jurisdiction of the Department of Labor.
- (5) Non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.
- (6) A proposed notice or warning such as notices of proposed disciplinary action, a letter of caution, or performance improvement plan notice.
- (7) An action terminating a temporary or term appointment or promotion that returns an employee to their former position or one of equivalent grade and pay in accordance with provisions made known to the employee before the appointment or promotion.
- (8) An SES appointee's performance evaluation, an SES appointee's reassignment following receipt of an unsatisfactory rating, the return of an SES career appointee to the General Schedule or other pay system during a probationary period or for less than fully successful executive performance, SES recertification decisions, and the termination of an SES career appointee during probation for unacceptable performance.

- (9) The substance of the job elements, performance standards, and work objectives of an employee's position.
- (10) The granting, or failure to grant, an award, rank, pay rate increase, performance bonus, quality step increase, or employee suggestion.
- (11) The separation or termination of a probationary employee for performance or conduct reasons.
- (12) The return of an employee from an initial appointment as a supervisor to a nonsupervisory position for unsatisfactory completion of a supervisory probationary period.
- (13) An action taken in accordance with the terms of a formal agreement entered into by an employee.
- (14) A salary offset determination that is reviewable under separate procedures established pursuant to the Debt Collection Act.
- (15) Freedom of Information Act disputes.
- (16) Recruitment and relocation bonuses, retention allowances, supervisory differentials, critical position pay, and waivers of dual compensation restrictions.

## 8 GENERAL PROVISIONS

### a. Representation

- (1) A Grievant is entitled to be accompanied, represented and advised at any stage of a grievance by a representative of his/her choice. A representative may be disallowed if the agency determines the representation would create a conflict of interest or position; would conflict with priority work of the agency; or would create unreasonable expenses for the agency.
- (2) Any disallowance of a representative must be communicated to the Grievant in writing. This notice must inform the Grievant that the agency decision may be appealed to OHRM within 10 days of the disallowance. A written decision on the appeal will be issued by OHRM.
- (3) The Grievant must notify the agency in writing of the designation of a representative and any change in that designation.

b. Official Time

- (1) The Grievant and the designated representative (if a Department employee) are entitled to a reasonable amount of official time to present the grievance. The Grievant must request and receive supervisory approval prior to any use of official time for this purpose.
- (2) An agency may provide in its regulations for official time to prepare a grievance. If an agency includes this provision in its regulations, the Grievant must obtain advance approval to use official time.

c. Freedom From Reprisal

- (1) Use of the grievance system is a protected activity. As such, restraint, interference, coercion, or reprisal against a Grievant, a Grievant's representative, or employees who cooperate in a grievance inquiry, may constitute a prohibited personnel practice and will not be tolerated.
- (2) Proven coercion, intimidation, restraint, or reprisal in response to grievance activity may subject the offender to a disciplinary or adverse action.
- (3) Allegations of reprisal should be made a part of a pending grievance. If no grievance is pending, the allegations should be raised as a new grievance.

d. Alternative Dispute Resolution (ADR)

- (1) USDA encourages employees to consider the use of an ADR process to resolve workplace conflict at the earliest stage possible and throughout the grievance process. (See DR 4710-1) ADR includes an array of techniques used to achieve consensual resolution of disputes, generally with the assistance of a neutral third party. ADR techniques include mediation, facilitation, neutral evaluation, conciliation, ombudsmen, arbitration, fact-finding, and mini-trials. The use of ADR can benefit agency management and employees by achieving effective and mutually satisfactory resolutions of disputes; decreasing time, cost, and other resources expended in resolving disputes; fostering a culture of respect and trust between supervision and employees; and increasing employee morale.
- (2) The request for ADR must be initiated within 15 days of the act or occurrence that is the basis for the dispute or within 15 days of the date the employee learned of the act or occurrence.

- (3) Whenever the use of ADR offers a reasonable opportunity for resolving a conflict, USDA managerial and supervisory employees are expected to respond favorably to an employee request for agency participation.
- (4) A Grievant's decision to request ADR will suspend the time limits associated with filing and processing a grievance when a timely election is made for ADR. Grievants must provide documentation to support the election of ADR and close out dates to ensure accurate compliance with grievance filing time limits.

e. EEO Complaints

- (1) If a Grievant raises allegations of prohibited discrimination in a grievance, the agency must notify the Grievant that such allegations may only be raised in an EEO complaint. The agency must further advise the Grievant of the procedures for filing an EEO complaint.
- (2) It is USDA's policy that duplicate reviews of the same issue(s) in different forums will not occur. Accordingly, when a Grievant files an EEO complaint that encompasses the issues in a pending grievance, the agency or other office reviewing the grievance, will notify the Grievant that the grievance will not be reviewed further and that it is being cancelled.

f. Cancellation

A grievance may be cancelled, in whole or in part, at any step of the process and without review of the merits of the grievance when:

- (1) The Grievant specifically requests such action.
- (2) The Grievant or matter at issue is not covered by the administrative grievance system.
- (3) The Grievant fails to specify the personal relief requested.
- (4) The person considering the grievance finds that no relief can be provided due to circumstances resulting in no legal means for relief or no means for a retroactive monetary award.
- (5) The Grievant or designated representative fails to comply with appropriate time frames and procedures.
- (6) The Grievant does not cooperate in the review of the grievance.

- (7) The Grievant files an EEO complaint that encompasses the issues in a pending grievance

When a grievance is cancelled, the Grievant will be notified in writing and will be advised of the right to ask OHRM to review the decision within 10 days of receipt of the notice of cancellation except where the grievance is canceled by OHRM.

g. Attorney Fees

A Grievant may request payment of attorney fees in cases where back pay is awarded and the Grievant's representative otherwise meets the requirements for attorney fees as provided in Part 550 of Title 5, Code of Federal Regulations. The agency will provide a written decision in response to the request and will advise the Grievant that a request for OHRM review of the decision must be filed within 10 days of receipt of the decision.

9. PROCEDURES

Agencies are free to structure internal grievance procedures as deemed appropriate, taking into account organizational and geographic considerations. Agency grievance procedures shall, however, incorporate the time limits specified in this Directive and the following minimum provisions:

a. Informal grievance procedure

- (1) A Grievant must, except as provided below, present the matter as an informal grievance and allow the agency an opportunity to resolve the issues. Failure to do so may be grounds for the rejection of a subsequent formal grievance. The presentation must be made in writing and must clearly identify it as a grievance. The Grievant must also identify the specific issues of the grievance and the corrective action being sought.
- (2) An informal grievance must be presented to the Grievant's immediate supervisor. The supervisor will either respond to the grievance or forward it to the proper level in the agency and inform the Grievant of this action.
- (3) An employee must present an informal grievance within 15 days of the act or occurrence that is the basis for the grievance or within 15 days of the date the employee learned of the act or occurrence.
- (4) The official considering the grievance will determine whether it is possible to resolve the informal grievance through corrective action, clarification or other adjustment. If resolution is not achieved, the official will give the Grievant a

memorandum which: (a) outlines the issues in the grievance and the attempts made to resolve them, (b) informs the Grievant that the informal stage has been terminated, (c) advises the Grievant that a formal grievance may be filed, (d) identifies the official with whom it may be filed, (e) specifies the time limit for filing, and (f) advises the Grievant that if the agency has not completed processing within 90 days of the filing of the informal grievance, the Grievant may elevate the grievance to OHRM.

- (5) The informal grievance procedure is waived when the head of the Grievant's agency has been substantively involved in the matter with which the grievance is concerned or when the matter being grieved is a disciplinary action (letter of reprimand to a 14-day suspension).

b. Formal grievance procedure

- (1) Agencies may determine the time limits for filing and responding to a formal grievance. However, the overall time limit in which to complete processing of a grievance is 90 days. This time will be recorded from the date the Grievant definitively indicates to the agency that an informal grievance is being initiated.
- (2) The Grievant must file a formal grievance with the designated official within the time limits set forth in the memorandum closing out the informal grievance or in the agency's grievance regulations. The grievance must be in writing, must be signed by the Grievant or a designated representative, must identify the matters being grieved and must specify the corrective action being sought. If a grievance was denied at the informal stage, the formal grievance may not raise any issue that was not presented as part of the informal grievance.
- (3) The designated official will either accept the grievance for review or will reject or cancel the grievance for cause. Any rejection or cancellation of a grievance must contain notification that the decision may be appealed to OHRM.
- (4) If the designated official accepts the grievance, a review of the evidence presented will be conducted to adjudicate the matter. If additional information is required, an inquiry may be conducted to obtain sufficient facts. The designated official will issue a written disposition to the Grievant and the Grievant's representative. The disposition must advise the Grievant as to the agency's findings on the grievance issues, whether any corrective actions will be implemented, and provide a copy of the grievance file. The disposition will also notify the Grievant and the Grievant's representative of the right to a final decision by the head of the agency or other appropriate official with or without review by a grievance examiner, the time limits, and procedures for requesting a final decision.

c. Grievance Examining

- (1) A Grievant who has received a written proposed disposition of a formal grievance will have 10 days in which to request a final decision by the agency head. The Grievant may request this final decision to be made with the benefit of a review and recommendation by a grievance examiner appointed by OHRM.
- (2) When a Grievant requests a final decision from the agency head without review by a grievance examiner, the agency shall issue the decision within 60 days.
- (3) When a Grievant requests a final decision from the agency head with the review by a grievance examiner, the recommended decision of the grievance examiner will be issued to the agency head within 60 days of OHRM's receipt of a complete grievance file.
- (4) Upon receipt of a request for review by a grievance examiner, the agency will promptly forward a copy of the grievance file and the Grievant's request to OHRM. The agency transmittal will address the merits of any additional arguments or evidence presented by the Grievant, will certify that the Grievant has been given a copy of the grievance file, will contain a determination on whether an EEO complaint has been filed on the same issues, and will identify a point of contact for the grievance examiner to obtain additional information.
- (5) The grievance examiner will conduct an analysis of the full grievance record and may conduct an inquiry or collect additional information necessary to resolve factual disputes or sufficiently develop the record. At the discretion of the grievance examiner, the methods may include but are not limited to review of records and documents, personal interviews, written inquiries, group meetings or hearings.
- (6) The grievance examiner will send the written recommended decision to the head of the agency or higher-level official, as the examiner deems appropriate. The recommended decision will record findings of fact, will contain an analysis of the issues and will recommend appropriate disposition of the grievance, including any corrective action that may be necessary.

d. Final Decision

- (1) The final deciding official will be the head of the agency in which the grievance was filed except where the agency head has had previous substantive involvement with any matter leading up to the grievance. In that case, a higher-level official must make the final decision.

- (2) When a grievance examiner issues a recommended decision, the deciding official may: (a) issue to the Grievant a final decision that adopts the recommendation, (b) issue to the Grievant a final decision that grants more relief to the Grievant than recommended by the grievance examiner, or (c) notify the Grievant that an appeal to the Director, OHRM has been filed by the Agency. The above action will be accomplished within 25 days of the date of receipt of the examiner's recommendation. If the agency head fails to issue a decision or file an appeal within the 25 day time frame, he/she must notify the Grievant and his/her representative in writing explaining the reasons for the delay and the date by which a final decision or appeal to OHRM will be completed. A Grievant may not appeal the grievance examiner's recommendation.
- (3) The agency head may appeal the grievance examiner's recommendation to the Director, OHRM, when the recommendation can be shown to be: (a) contrary to law, rule, regulation or published agency policy, or (b) supported by less than substantial evidence.
- (4) Upon receipt of a timely appeal, the Director, OHRM, will render USDA's final decision on the grievance after ensuring that the Grievant or designated representative has had an opportunity to review and comment upon the agency's appeal. The final decision will be rendered within 60 days of receipt of any comments from the Grievant or designated representative.
- (5) There are no provisions for review of the Director, OHRM's final grievance decision.

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